



1Fw

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

4

Application Number	09964,000	09/964,000
Filing Date	09/26/2001	
First Named Inventor	Guess, William Y	
Art Unit	1761	
Examiner Name	Becker, Drew	
Attorney Docket Number		

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name			
Signature	<i>William Y. Guess</i>		
Printed name	William Y. Guess		
Date	May 30, 2006	Reg. No.	

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	<i>William Y. Guess</i>		
Typed or printed name	William Y. Guess	Date	May 30, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/964,000 Confirmation No. 3019
Applicant : William Y. Guess
Filed : 09/26/2001
TC/A.U. : 1761
Examiner : Becker, Drew

Director of Patents

Mail Stop Petition

P.O. Box 1450

Alexandria, Va 22313-1450

Petition to advance appeal.

At the onset petitioner understands that issues relative to appeal are generally not under the purview of the Office of Petitions, however due to the unusual nature of the events prompting this petition, petitioner requests assistance.

The distinction between examination and appeal are blurred further by the improper Notice of Abandonment mailed 05/19/2006. All of which results from procedural impropriety by the examiner. Petitioner does not believe that fees should be charged for this petition, however if any fees are required, the office should contact the petitioner at wyg@cox.net or by phone at 225-924-5460 which is petitioner's work phone number.

Petitioner is guaranteed a right to appeal and did so by way of a Notice of Appeal filed 06/09/2005, with fees paid, followed by an appeal brief filed with appropriate fees on 08/05/2005.

On 10/13/2005 the examiner mailed a Notice of Defective Appeal Brief. On this PTO form the examiner checked box 4, the substance of which is that the appellant is required to provide a summary as required by 37 CFR 41.37 (c) (1) (v). However 37 DFR 41.37 (c) (1) requires nothing from those appellants not represented by a registered practitioner as is the case with petitioner.

Subsequent to the Notice of Defective Appeal Brief, petitioner mailed a letter stating the substance of the rule relative to pro se appellants. This letter was filed on 10/21/2005 and appears below, other than the signature, in its entirety:

In response to the Notification of Non-Compliant Brief, applicant disagrees and directs the examiners attention to 37 CFR § 41.37 (c)(1) which states clearly that appellants “not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section” Pursuant to this clear language, appellant is not required to include either a summary of the invention under heading (v) or the grounds of rejection under heading (vi). Appellant included items under these headings as a courtesy to the board such that a single document (the brief) would contain the relevant, albeit in the case of the summary, cursory information. Appellant’s invention is very simple.

Apparently this explanation was not good enough for the examiner who responded on 03/29/2006, in which the following appears:

In the letter of 10/18/05 appellant argues that a pro se applicant need only “substantially comply” with this requirement. However, because there are 35 U.S.C. 112(1) new matter rejections of all the appealed claims, this requirement will not be (*sic*) waved.

Petitioner’s recitation of the rules was not an argument.

The examiner goes on to state:

It is appellant’s best (*sic*) interests to provide evidence of support for all the rejected claim limitations so that the Board of Patent Appeals and Interferences can make an informed decision on this issue.

In the first statement above, the examiner misstates both the relevant rule and the statute. He mischaracterizes appellant’s letter as well as his own office action.

Rule 41.37 (c) (1) states that only headings 1-4 and 7-10 need be complied with “substantially”. Does the examiner have the power to waive a PTO rule? Further there are no outstanding “new matter” rejections. The language of rule 41.37 (c) (1) is clear and unconditional.

This “rule changing” by the examiner is clearly arbitrary. Petitioner has another case 10/109,478¹ under appeal in which the examiner did not “waive”

¹ This examiner has more subtle methods of attrition.

this rule, even though nothing appeared under headings v and vi, other than a reference to rule 41.37 (c) (1). In the action mailed 03/29/06 the examiner cites no authority for this procedural impropriety.

Petitioner has rights under the U.S. Constitution and the Patent Act. And specifically under Title 35, petitioner has a right to appeal an adverse position to that of the examiner. The attempt by the examiner to cause the abandonment of petitioner's case is legally improper. The examiner filed the inaccurate response to petitioner's letter of 10/21/2005 almost 7 months later than the improper notice of defective appeal brief. In complete frustration and with the intent of proceeding with the appeal, petitioner filed an amended brief which resulted in a notice of abandonment. And insofar as this delay has been caused entirely by procedural impropriety, this abandonment notice is fatally flawed.

Petitioner earnestly requests that the Office of Petitions see to it that the appeal goes forward by insisting that the examiner should: either allow each and every asserted claim, reopen prosecution, or file an answer and docket the case with the BPAI. Seeing to it that proper procedures are followed is clearly your charge.

Respectfully submitted,

William Y. Guess